

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Ross William Ulbricht,

Petitioner

v.

United States of America,

Respondent.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/20/2019

19 Civ. 7512 (LGS)

Order re: Attorney-Client Privilege Waiver (Informed Consent)

WHEREAS Ross William Ulbricht has moved for relief from his conviction pursuant to 28 U.S.C. §2255 on the ground of ineffective assistance of counsel (the “2255 Petition”); and

WHEREAS the Government, after reviewing the motion papers, has concluded that the information from Petitioner’s former trial counsel, Joshua Dratel, Esq. of Joshua L. Dratel P.C. (“Counsel”), is needed in order to allow the Government to respond to the motion, and that an affidavit from Counsel is necessary for the Government to properly respond to the 2255 Petition; and

WHEREAS the Court, after reviewing the motion papers, ~~is satisfied that~~ ^{has determined that} testimony of Counsel is needed in order to allow the Government to respond to the 2255 Petition; and

WHEREAS by making the motion, the movant has waived the attorney-client privilege as ^{as to the matters alleged to constitute ineffective assistance of counsel.} a matter of law; and

WHEREAS the Court is cognizant that, absent court order or informed consent, ethical concerns may inhibit Counsel from disclosing confidential information relating to a prior client even in the absence of a privilege, *see, e.g.,* ABA Standing Comm. on Ethics and Prof. Responsibility Formal Op. 10-456 (July 14, 2010), *Disclosure of Information to Prosecutor When Lawyer’s Former Client Brings Ineffective Assistance of Counsel Claim,*


IT IS HEREBY ORDERED that Counsel shall give sworn testimony, in the form of an affidavit, addressing the allegations of ineffective assistance of counsel made by Petitioner, by January 20, 2020; and it is further until February 19, 2020,

ORDERED that the Government has ~~30 days from the submission of Counsel's affidavit~~ file to ~~prepare~~ a response to the 2255 Petition, regarding the issues raised in the 2255 Petition. by March 20, 2020. Petitioner shall file his reply, if any, ~~within 30 days of the Government's response.~~ It is further

ORDERED that the protective order regarding the purposes for which the Government can use any information provided by Mr. Dratel shall include the following language regarding Petitioner's waiver of the attorney-client privilege:

The attorney-client privilege applicable to Ulbricht's communications with Dratel shall not be deemed automatically waived in any other Federal or State proceeding by virtue of the above-ordered disclosure in this section 2255 proceeding. The affidavit and documents supplied by Dratel shall be limited to use in this proceeding, and the Government is prohibited from otherwise using the privileged information disclosed by Dratel without further order of a court of competent jurisdiction.

Dated: New York, New York
December 20, 2019


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE